IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16770 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GOKALBHAI NANABHAI PATEL - Petitioner
Versus
CHIEF INFORMATION COMMISSIONER & 4 - Respondents

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Appearance :
MR MURALI N DEVNANI for the Petitioner.
MR NV ANJARIA for Respondent No.1.
MR HS MUNSHAW for Respondent No.2.
DELETED for Respondent Nos.3 - 4.
MR DC DAVE for Respondent No.5.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 31/08/2007

ORAL JUDGMENT

Leave to delete respondent Nos.3 and 4 is granted.

2. **Rule**. Learned counsels for the respective parties waive service of notice of Rule on behalf of the respondents.

3. The present petition has been preferred to ventilate the grievances about misuse of powers vested in Chief Information Commissioner, who is Second Appellate Authority under the Right to Information Act,2005 (hereinafter referred to as “the Act,2005”).

4. The present writ petition has been preferred against the order dated 14th June,2007 passed by Chief Information Commissioner while hearing Second Appeal No.730 of 2006-07, in which, order of demolition has been passed by Chief Information Commissioner.

5. Learned counsel for the petitioner submitted that respondent No.5 had applied for getting information under the Act,2005 to Public Information Officer i.e. Talati-cum-Mantri, Village:Kheroli, Taluka: Virpur, District: Kheda i.e. respondent No.4. His application under Section 6 of the Act,2005 was dated 4th

October,2006. Public Information Officer replied on 3rd November,2006 to the original applicant (present respondent No.5). Being aggrieved by the reply/order of Public Information Officer, First Appeal was preferred before Taluka Development Officer on 15th November,2006. This Taluka Development Officer has not given any number to this First Appeal and has replied on 11th December,2006 that Officers are busy with elections work. Being aggrieved by this, original applicant i.e. respondent No.5 had preferred Second Appeal No.730 of 2006-07 under Section 19(3) of the Act,2005 before Chief Information Commissioner. Chief Information Commissioner passed an order on 14th June,2007 for removal of the encroachment and without giving an opportunity of being heard to the petitioner. No hearing has taken place before Chief Information Commissioner. No other authority has arrived at a conclusion that the construction of the petitioner is an encroachment. Absolutely is arbitrary is the decision of the Chief Information Commissioner. Whimsical is the approach of the Chief Information Commissioner. He has not kept in mind, bare principle of natural justice. Chief Information Commissioner has not properly exercised his power, jurisdiction and authority under the Act,2005. At the most, information may be given or it may be denied under the Act,2005 but the order of

demolition cannot be passed by Chief Information Commissioner under the Act,2005.

6. Learned counsel for the petitioner further submitted that when an authority under the Act,2005 is deciding anything about third party, then third party ought to be heard. The construction of the present petitioner is ordered to be demolished. No hearing was given to the petitioner by any of the authorities, neither by Public Information Officer nor by First Appellate Authority nor by Second Appellate Authority and, therefore also, the order dated 14th June,2007 passed by Chief Information Commissioner in Second Appeal No.730 of 2006-07 deserves to be quashed and set aside. Whether there is any encroachment by the petitioner, was never the subject matter under the Act,2005. Nobody has argued before Chief Information Commissioner that the fact as to encroachment is already established and it should be removed. Whimsically and capriciously, Chief Information Commissioner has acted in the matter. Powers ought to be exercised in accordance with the Act,2005. Chief Information Commissioner has exceeded his jurisdiction. The present respondent no.5 has asked for some information about the petitioner. In fact, no such information could have been given by Public Information

Officer, without following due procedure prescribed under Section 11(1) of the Act,2005. By the impugned order, right of third party i.e. petitioner of preferring First Appeal and Second Appeal has also been taken away and, therefore, the impugned order deserves to be quashed and set aside.

7. Learned counsel for respondent No.5 submitted that respondent No.5 is the original applicant under Section 6 of the Act,2005, who has also submitted that an application was given to get information and not for demolition under the Act,2005. The impugned order is not in accordance with the provisions of the Act,2005. It is further submitted that while quashing the impugned order, rights may be reserved with the respondent No.5 to point out to the concerned authorities that the construction of the petitioner is an encroachment under the relevant laws.

8. Learned counsel for respondent No.1 submitted that on the basis of arguments canvassed by respondent No.5, the impugned order has been passed. It is an appeal before respondent No.1 and if this Court directs to furnish information as prayed for by respondent No.5, the same will be complied with by respondent No.1.

9. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, the order dated 14th June,2007 passed by Chief Information Commissioner in Second Appeal No.730 of 2006-07 deserves to be quashed and set aside, for the following facts and reasons:

(I) The impugned order is passed without any power, jurisdiction and authority vested in Chief Information Commissioner under the Act,2005. Looking to the provisions of the Act,2005, following are the main powers of the State Information Commissioner, under Section 18, 19 and 20 of the Act,2005.

Main Powers of State Information Commission:

> ***19. Appeal.***
> ***(8)*** *In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to-*
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> *(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including-*
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> *(i) by providing access to information, if so requested, in a particular form;*
> *(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;*
> *(iii) by publishing certain information or categories of information;*

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(v) by enhancing the provision of training on the right to information for its officials;

(vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act;

(d) reject the application.

=> State Information Commission has power to hold inquiry against erring Officer [under Section 18(2)]

=> State Information Commission has power to impose penalty [under Section 20]

=> State Information Commission while holding inquiry under Section 18(1), shall have the same powers as are vested in a Civil Court, while trying a Suit under Code of Civil Procedure,1908, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;

(b) requiring the discovery and inspection of documents;

(c) receiving evidence on affidavit;

(d) requisitioning any public record or copies thereof from any court or office;

(e) issuing summons for examination of witnesses

or documents; and

(f) any other matter which may be prescribed.

(II) It appears that the original applicant-respondent No.5 preferred an application to get information under Section 6 of the Act,2005 to Public Information Officer. Being dissatisfied with the answer of Public Information Officer dated 3rd November,2006, First Appeal was preferred under Section 19(2) of the Act,2005 before Taluka Development Officer on 15th November,2006 and has also given such a reply on 11th December,2006 that has promoted respondent No.5 to prefer Second Appeal No.730 of 2006-07 under Section 19(3) of the Act,2005 on 20th January,2007. Looking to the provisions of the Act,2005, the order of removal of encroachment passed by Chief Information Commissioner is absolutely illegal and dehors the provisions of the Act,2005. At the most, information may be supplied or may be denied, but, further order of removal of encroachment cannot be passed by Chief Information Commissioner.

(III) Whether there is encroachment or not, is a civil dispute. It cannot be decided by Chief Information Commissioner.

(IV) Whenever any applicant is applying for getting

any information about third party, such information shall be given by Public Information Officer under Section 7 of the Act,2005, only after following procedure prescribed under Section 11(1) of the Act,2005 and also keeping in mind Section 7(7) of the Act,2005. Here no such opportunity of hearing was given to the petitioner by Chief Information Commissioner.

(V) The concerned authorities have not properly appreciated that the present petitioner was never a party in the First Appeal as well as in the Second Appeal and the order has been passed against the petitioner. No notice was ever issued to the present petitioner and, therefore also, the impugned order deserves to be quashed and set aside. Chief Information Commissioner appears to be ignorant about aforesaid simple judicial process. Bare minimum requirement is, to follow principles of natural justice.

(VI) The Chief Information Commissioner has not given any opportunity of being heard to the petitioner. Before passing an order against any person, bare minimum requirement ought to be kept in mind that principle of natural justice ought to be followed. Opportunity of being heard ought to be given to the petitioner. There is

a right vested in third party under Section 19(4) that he must get an opportunity of being heard. It appears that Chief Information Commissioner has lost right of this explicitly clear and unambiguous provision of Section 19(4). This aspect of the matter has not been properly appreciated by the Chief Information Commissioner and, therefore also, the impugned order deserves to be quashed and set aside.

(VII) Under the Right to Information Act,2005, the authority has a basic function to be performed either to give the information or to deny to furnish the information. Additional prayers like demolition, etc. cannot be granted by the authority under the Act,2005, which take away substantive rights of the party. Sometime third party is not joined as a party and, therefore, more care should be taken by the authority. Whenever additional prayers are made, then to get information, may not be granted by the authority, without following due procedure of law. To pass an order of demolition of completely out of jurisdiction of Chief Information Commissioner. This authority must act within the jurisdiction, conferred by the Act,2005.

(VIII) Chief Information Commissioner has passed an

order of demolition, against third party (petitioner)

(a) though third party (i.e. petitioner) was not a party in Second Appeal before him;

(b) without giving an opportunity of being heard to third party (i.e. petitioner);

(c) which also takes right of third party to prefer first appeal and second appeal.

Total whimsical and capricious is the oder passed by the Chief Information Commissioner.

10. As a cumulative effect of the aforesaid facts and reasons, the impugned order dated 14th June,2007 passed by the Chief Information Commissioner in Second Appeal No.730/2006-07 is hereby quashed and set aside. This Court is not entering into the question as to Whether there is encroachment by the petitioner or not. This question is kept open. Rule made absolute to the aforesaid extent.

(D.N.PATEL,J)

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